

**A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE A LEASE AGREEMENT WITH [SUCCESSFUL PROPONENT] FOR CERTAIN CITY-OWNED PROPERTIES TO ALLOW [SUCCESSFUL PROPONENT] TO INSTALL, OPERATE AND MAINTAIN SOLAR PANELS FOR THE GENERATION OF RENEWABLE ENERGY; ALL REVENUE FROM SAID LEASE SHALL BE DEPOSITED INTO THE ACCOUNTS SET FORTH HEREIN; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns certain properties located within the City, commonly known as the Cascade Road Landfill, the Key Road Landfill, and the Gun Club Road Landfill, being more particularly described on Exhibit "A," which is attached hereto and incorporated herein ("Proposed Leased Areas"); and

WHEREAS, by leasing the Proposed Leased Areas, the City can generate a stream of revenue, reduce greenhouse gas emissions, improve air quality, help distribute the generation of renewable energy, increase the reliability of the energy grid, and create an opportunity for local business development in the City; and

WHEREAS, Section 2-1547(a)(1) of the City Code of Ordinances allows the City to lease City-owned property if the sale of the property is not in the best interest of the City and the property is not currently being used by the City; and

WHEREAS, the physical condition of the Proposed Leased Areas is such that the return on any sale of the Proposed Leased Areas is likely to be minimal, particularly relative to the benefits that are expected to accrue to the Proposed Lease Areas and to the City as a whole as a result of the increase of renewable energy generation and economic development; and

WHEREAS, the Proposed Leased Areas are closed landfills that no longer accept deposits of waste and it is not necessary for the City to keep the surface of the Proposed Leased Areas in their current undeveloped conditions in order for the City to fulfill its continuing obligations to maintain the Proposed Leased Areas in accordance with its landfill permits and all other applicable laws; and

WHEREAS, the Commissioner of the Department of Public Works recognizes the benefit of leasing underused City-owned properties for the purpose of allowing the installation, operation and maintenance of solar panels thereon for the generation of renewable energy; and

WHEREAS, the City has identified the Proposed Leased Areas as suitable locations to construct solar panels and to harvest solar energy because these are underused un-shaded areas; and

WHEREAS, the City advertised for FC-7272, Land Lease for Solar Generating Projects, on behalf of the Department of Public Works, in accordance with Section 2-1547(f) of the City Code of Ordinances; and

WHEREAS, the Commissioner of the Department of Public Works and the Chief Procurement Officer recommend that FC-7272, Land Lease for Solar Generating Projects, be awarded to [SUCCESSFUL PROPONENT], the most responsible and responsive offeror, for the lease price of \$##### (\$ _____) per year.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor, or his authorized designee, is authorized to negotiate and enter into a lease agreement with [SUCCESSFUL PROPONENT] for the purpose of leasing the Proposed Lease Areas to install, operate and maintain solar panels for the generation of renewable energy, said lease to be substantially similar to the lease attached hereto as Exhibit "B" (the "Proposed Lease");

BE IT FURTHER RESOLVED, that the term of the lease will be for twenty (20) years with one (1) five (5) year renewal option to be exercised at the City's sole discretion;

BE IT FURTHER RESOLVED, that under the terms of the Proposed Lease, [SUCCESSFUL PROPONENT] will cover all costs and expenses of designing, installing, maintaining, operating, and replacing the solar photovoltaic panels for the farming of solar electricity at the Proposed Leased Areas for the duration of the lease;

BE IT FURTHER RESOLVED, that the Chief Procurement Officer, in consultation with the City Attorney, is directed to prepare all appropriate documents for execution by the Mayor, or his authorized designee;

BE IT FURTHER RESOLVED, that the lease will not become binding on the City and the City will incur no obligation or liability under it until it has been approved as to form by the City Attorney, executed by the Mayor, attested to by the Municipal Clerk and delivered to [SUCCESSFUL PROPONENT];

BE IT FURTHER RESOLVED, that all revenue generated from the lease of the Proposed Lease Area shall be deposited into the following Account: 5401 (Solid Waste Services Revenue Fund) 000002 (Revenue Department) 3442707 (Miscellaneous Other Revenue) (5401.000002.3442707); and

BE IT FINALLY RESOLVED, all resolutions and parts of resolutions that are in conflict with the provisions of this resolution are waived to the extent of the conflict.

EXHIBIT A

GUN CLUB ROAD LANDFILL

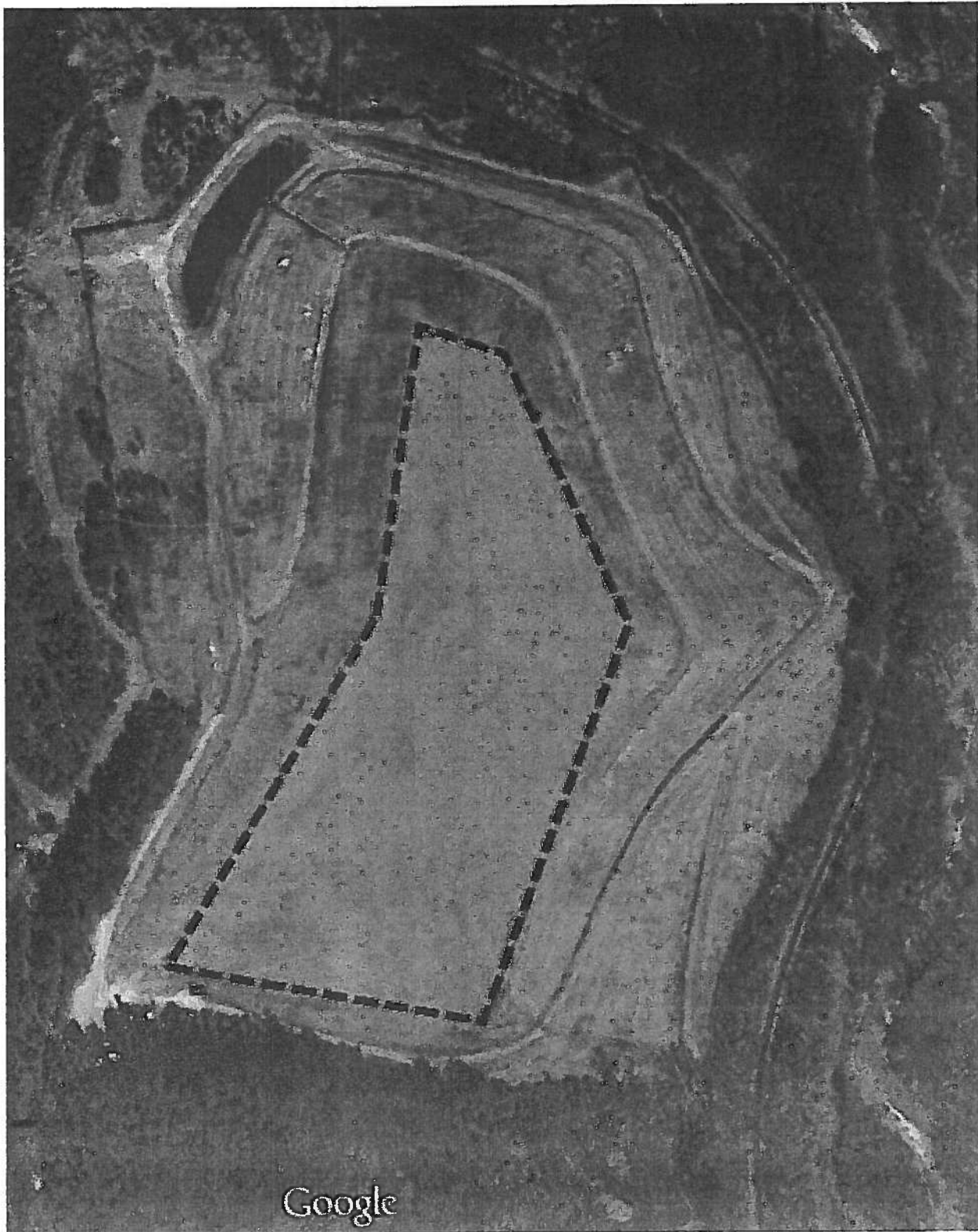
Address: 1401 Gun Club Road Atlanta, GA 30018



Attachment: Proposed Legislation, Exhibits A and B (14-R-3383 : Authorization for Solar Farm Lease - SUSTAINABILITY)

CASCADE ROAD LANDFILL

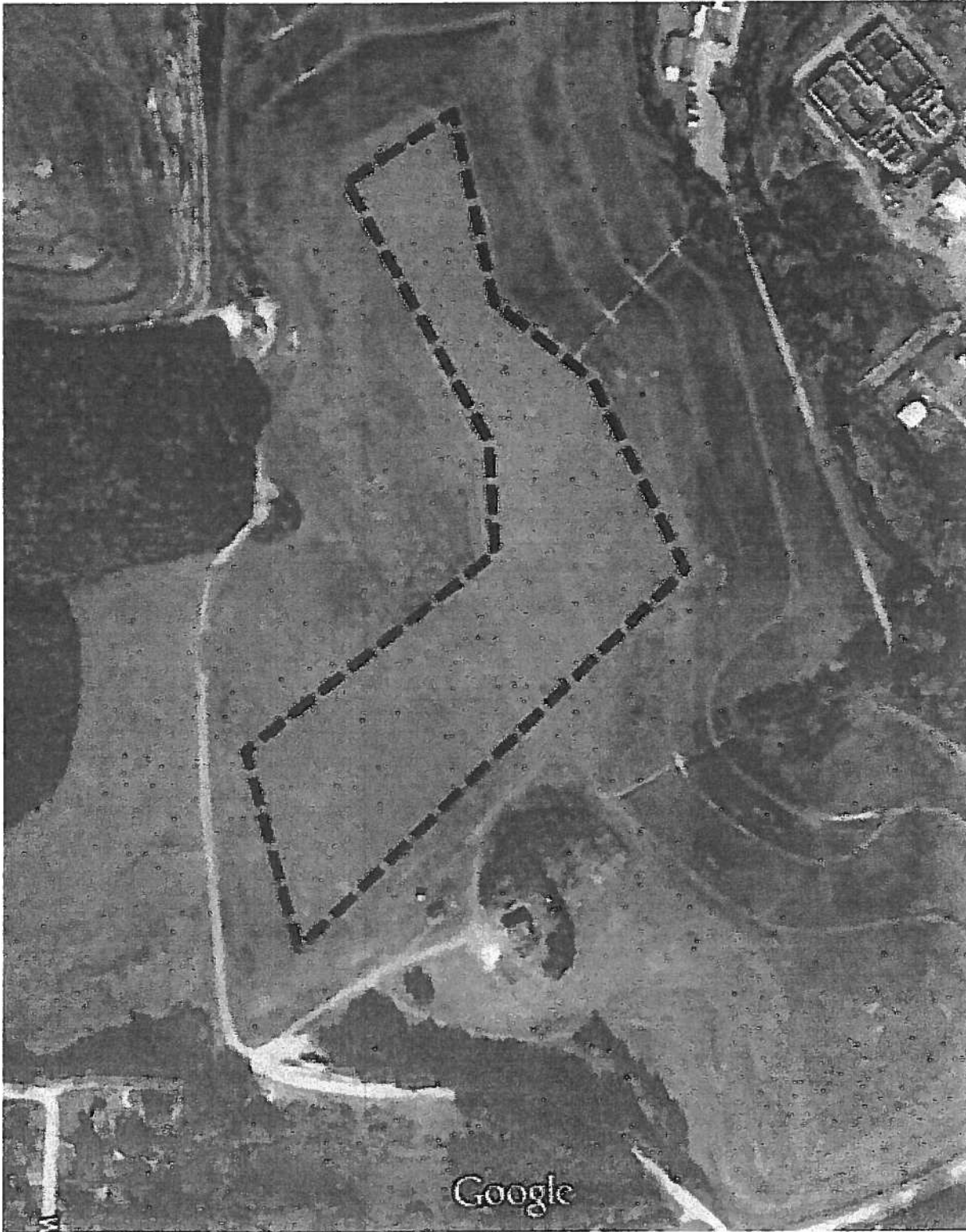
Address: 4047 Cascade Road, GA 30331



Attachment: Proposed Legislation, Exhibits A and B (14-R-3383 : Authorization for Solar Farm Lease - SUSTAINABILITY)

KEY ROAD LANDFILL

Address: 1500 Key Road, Atlanta, GA 30316



Attachment: Proposed Legislation, Exhibits A and B (14-R-3383 : Authorization for Solar Farm Lease - SUSTAINABILITY)

EXHIBIT B

DRAFT for LANDFILLS

LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

THIS LEASE AGREEMENT ("Lease") is made and entered into this ____ day of _____, 2014 ("Effective Date"), by and between the CITY OF ATLANTA, a political subdivision of the State of Georgia ("Atlanta" or "Lessor") and _____ ("_____" or "Lessee"), collectively Lessee and Lessor are referred to as the "Parties."

BACKGROUND

Atlanta owns certain property located in LL _____ of the ____ District of Fulton County, Georgia, having a tax identification number in Fulton County of _____ ("Property"). The Property is used to operate and maintain a landfill, known as the "_____" Atlanta desires to lease the Property to _____ for the purpose of installing solar panels for the generation of electricity to sell to the Georgia Power Company in accordance with the terms and conditions described below.

NOW THEREFORE in consideration of the mutual covenants contained herein as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Authority.** Lessor and Lessee have the authority to enter into and perform the terms and conditions of this Lease pursuant to the legislative authority granted by the governing body of the Lessor and Lessee, which legislative authority of Lessor is attached as Exhibit A.
2. **Term.** The term of this Lease shall be for twenty (20) years commencing on the Effective Date of this Lease, subject to the termination provision contained in Section 10, below. At the end of such term, Lessor and Lessee may agree to renew the Lease for an additional five (5) year term.
3. **Rent.** Lessee shall pay Lessor a fee of _____ (\$_____) annually for the use of the Property payable in equal monthly installments of _____ (\$____).
4. **Use of Property.**

4.1 Lessor hereby grants Lessee the right to use the Property in accordance with the terms and conditions of this Agreement. Lessee shall maintain the Property in its current state and maintain the integrity of the landfill cap under and around the solar panels. All uses of the Property shall not compromise the integrity of the land on which the solar panels are built. Lessor reserves the right to require Lessee to remove any portion of the solar panels that may interfere with Lessor's intended use of the Property.

4.2 Lessee shall comply with a minimum capacity of 800 kW on the Property and shall submit a monthly operational report, the format and content to be approved by the City, in soft copy. Lessor may audit the operational report, subject to the provisions contained in Section 6, and may ask the Lessee to submit the operational report in hard copy at its discretion.

4.3 No improvements, other than the solar panels, shall be permitted on the Property without the express written consent of Lessor, provided that Lessee may be permitted to repair and/or improve the solar panels to a safe and workable condition, free and clear of any defects. Lessee shall be solely

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LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

responsible for the maintenance and security of such solar panels and shall remove such solar panels upon the termination of this Lease.

4.4 Use of Property shall not include any land disturbing activities, using mechanized or other equipment that would require a land disturbance permit. All activity by Lessee on the Property shall be consistent with and shall not interfere with Lessor's intended use of the Property.

4.5 Lessor expressly reserves all rights and interests to its ownership of the Property and superior use of the Property for its intended use and in no way relinquishes such interest by way of this Lease. Lessee expressly acknowledges that the permissions granted in this Lease are expressly conditioned and subject to Lessor's interest and uses of the Property.

4.6 Lessee shall comply with all applicable state, local and federal laws, regulations, policies and procedures in its use of the Property. Lessee is responsible for obtaining all necessary permits, inspections and documentation for installation, operation, and maintenance.

4.7 Lessee shall be responsible for all expenses for the design, installation, maintenance, and replacement of solar panels for the farming of solar electricity, according to this Lease. Lessee is responsible for delivering, assembling, installing, operating and maintaining the solar panels on the Property in accordance with Lessee's Operations and Maintenance plan, which is attached hereto and incorporated herein as Exhibit B.

4.8 Under no circumstances shall Lessee knowingly permit illegal activity to occur in conjunction with the use of the Property.

5. Employees. Any personnel employed by, volunteering on behalf of, or contracted with by Lessee shall be deemed "employees," "volunteers" or independent contractors respectively of Lessee, and shall not be deemed employees or volunteers of Lessor.

6. Records, Audit and Inspection. Lessee shall maintain records and accounts in direct connection with the performance of this Lease for a period of three (3) years from the expiration or termination of this Lease. Lessor and its designated agents and representatives shall have the right to examine and copy such records and accounts at all reasonable times, with advance notification, and such right shall survive for up to three (3) years following the expiration or termination of this Lease. Lessor further shall have the right to access and inspect the Property at any time and without notice for the purpose of ensuring compliance with this Lease.

7. Benefits to the Parties. Lessor acknowledges and the Parties agree that the use of the Property, as contemplated by this Lease, will substantially benefit Lessor through Lessee's use of the Property to generate electricity from a renewable resource thereby reducing greenhouse gas emissions and improving air quality.

8. As-is. Lessor shall tender the Property for Lessee's use in an "as-is" condition. Lessor shall not be responsible for any improvements to the Property that Lessee may deem necessary for Lessee's use of the Property.

9. Insurance, Bonding and Indemnification.

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LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

9.1 Lessee shall provide the insurance and bonding deemed necessary by Lessor's Office of Enterprise Risk Management as further described in the Insurance and Bonding Requirements attached hereto and incorporated herein as **Exhibit C**;

9.2 Lessee shall agree to defend, indemnify and hold harmless Lessor, its agents, successors and assigns from and against any and all demands, claims, payments, obligations, actions or causes of action, losses, damages, penalties, fines, liabilities, costs and expenses, including without limitation, all claims, loss and damage arising from any property damage, injury or claim of injury to, or death of, any person arising from the use of the Property. In addition, Lessee agrees to obtain the same indemnification from any independent contractors operating the Property on its behalf in favor of Lessor.

10. Termination. This Lease shall terminate in the event any material breach of this Lease is not cured by Lessee within thirty (30) days following receipt of notice from Lessor of such breach. Lessor may terminate this Lease for convenience upon providing Lessee with ninety (90) days written notice to Lessee upon Lessor's determination that Lessor has a need to utilize the Property for its intended purpose which, in Lessor's sole determination and discretion, would require Lessee to discontinue its use. Upon such determination that the uses and permissions granted herein are inconsistent with Lessor's uses of the Property, and after Lessor provides notice to Lessee, Lessee shall cease all use of the Property, vacate the Property and remove all facilities, equipment and belongings of Lessee from the Property. At such time, Lessee shall leave the Property in as good condition as existed at the time it assumed use of the Property. Lessor may terminate the Lease immediately upon discovery of any activity on the Property that poses a direct and imminent threat to the health, safety, general welfare of Lessor's citizens or the security and critical operations of the Property. Lessee may terminate this Lease for convenience upon providing Lessor with ninety (90) days written notice.

11. Notices. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air Note or overnight courier, or by hand delivery by reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Parties any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

In the case of Lessor to:

City of Atlanta
55 Trinity Avenue, Suite 5400
Atlanta, Georgia 30303
Attn: Commissioner

And

City Attorney
68 Mitchell St., Suite 4100
Atlanta, Georgia 30303

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LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

In the case of the Lessee to:

12. Miscellaneous Provisions.

ENTIRE AGREEMENT

This Lease supersedes all prior discussions and agreements among the Parties with respect to the subject matter hereof. This Lease shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this Lease is executed and specifically referencing such a modification or amendment.

BINDING EFFECT

This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.

SEVERABILITY

In the event any provision or portion of this Lease is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.

FURTHER ASSURANCES

On and after the Effective Date, each Party shall at the request of any other, make, execute and deliver or obtain and deliver all such certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which any Party may reasonably require to effectuate the provisions and the intentions of this Lease.

CAPTIONS

All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular paragraphs and subparagraphs by number refer to the text of the paragraphs or subparagraphs so numbered in this Lease.

GENDER

Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

DRAFT for LANDFILLS

LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

EXHIBITS

Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is, and shall be, construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to or otherwise mentioned.

REFERENCES

All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraphs of this Lease. Unless otherwise specified in this Lease, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like or similar import shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

RIGHTS CUMULATIVE

Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

AMENDMENT AND ASSIGNMENT

The interest of the parties may not be assigned without prior written consent from the other party. This Lease shall not be amended except in writing by both parties.

GOVERNING LAW

This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of laws thereof. The Parties hereby fix jurisdiction and venue for any action brought with respect to this Lease in Fulton County, Georgia.

NO PARTNERSHIP

This Lease shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities on any Party. Furthermore, no Party shall have any right, power or authority to enter into any Lease or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.

TIME OF ESSENCE

Time is and shall be of the essence in this Lease.

WAIVER

DRAFT for LANDFILLS

LEASE AGREEMENT FOR A CITY OF ATLANTA LANDFILL PROPERTY

The failure of any Party to seek redress for any violation of, or to insist upon the strict performance of, any term of this Lease will not prevent a subsequent violation of this Lease from being actionable by such Party.

DRAFT

DRAFT for LANDFILLS**LEASE AGREEMENT
FOR A CITY OF ATLANTA
LANDFILL PROPERTY**

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their duly authorized officials, the day and year first above written.

LESSOR**CITY OF ATLANTA**

Mayor**ATTEST:**

Municipal Clerk (Seal)**Recommended:**

**Commissioner, Department of
Watershed Management****Approved as to form:**

City Attorney (by Assistant City Attorney)

Attachment: Proposed Legislation, Exhibits A and B (14-R-3383 : Authorization for Solar Farm Lease - SUSTAINABILITY)

DRAFT for LANDFILLS**LEASE AGREEMENT
FOR A CITY OF ATLANTA
LANDFILL PROPERTY****LESSEE****Company**

Name

Its

Print**ATTEST:**

Notary Public (Seal)

DRAFT

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to authorize the Mayor to negotiate and execute a lease agreement for City-owned properties (Landfill Property and Airport plots) for the purpose of installing solar panels for the generation of renewable energy (i.e., solar farming) and selling to the Georgia Power Company.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

The City is seeking proposals from private and public entities interested in leasing land from the City for solar farming purposes (the Project). The City intends to lease the space at one or more properties that include three of the City's closed landfills and two at the Hartsfield-Jackson Atlanta International Airport. The City has identified Cascade Road Landfill, Gun Club Landfill, and Key Road Landfill as potential landfill locations and two parcels on the south side of the security identification display area at the Airport for the proponents to construct solar panels

and to harvest solar energy -- the sites are unshaded areas that are currently underutilized. All projects on the Airport parcels will coordinate with DOA and projects on one or more of the landfills will coordinate with DPW. This resolution authorizes the lease agreements with the successful proponent and reflects the Mayor's desire to increase the renewable energy technologies available in the City.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) **Source Selection:** RFP Sec. 2-1189
- (c) **Bids/Proposals Due:** 03/24/2014
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:** 20 years

4. Fund Account Center (Ex. Name and number):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: Example: Local Assistance Grant

6. Fiscal Impact: TBD but will be revenue generating

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery: N/A

Examples:

- a. *Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. *Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Juanmanuel Garcia-Sanchez

(Do Not Write Above This Line) A RESOLUTION BY FINANCE/EXECUTIVE COMMITTEE A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE A LEASE AGREEMENT WITH [SUCCESSFUL PROPONENT] FOR CERTAIN CITY-OWNED PROPERTIES TO ALLOW [SUCCESSFUL PROPONENT] TO INSTALL, OPERATE AND MAINTAIN SOLAR PANELS FOR THE GENERATION OF RENEWABLE ENERGY; ALL REVENUE FROM SAID LEASE SHALL BE DEPOSITED INTO THE ACCOUNTS SET FORTH HEREIN, AND FOR OTHER PURPOSES.	First Reading Committee _____ Date _____ Chair _____ Referred To _____		FINAL COUNCIL ACTION <input type="checkbox"/> 2nd <input type="checkbox"/> 1st & 2nd <input type="checkbox"/> 3rd Readings <input type="checkbox"/> Consent <input type="checkbox"/> V Vote <input type="checkbox"/> RC Vote
	Committee Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____	Committee Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____	
<input type="checkbox"/> CONSENT REFER <input type="checkbox"/> REGULAR REPORT REFER <input type="checkbox"/> ADVERTISE & REFER <input type="checkbox"/> 1st ADOPT 2nd READ & REFER <input type="checkbox"/> PERSONAL PAPER REFER	Committee Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____	Committee Date _____ Chair _____ Action Fav, Adv, Hold (see rev. side) Other _____ Members _____	CERTIFIED MAYOR'S ACTION
	Date Referred _____ Referred To: _____ Date Referred _____ Referred To: _____ Date Referred _____ Referred To: _____	Date Referred _____ Referred To: _____ Date Referred _____ Referred To: _____ Date Referred _____ Referred To: _____	

DEPARTMENTAL AUTHORIZATION